

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

SHAWN LEWIS SMITH,

Plaintiff,

v.

DIRECTOR, TDCJ-CID,

Defendant.

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Civil Action No. 5:20-CV-108-RWS-JBB

ORDER

Petitioner Shawn Lewis Smith, a prisoner confined at the Ellis Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Docket No. 1. The Court ordered that this matter be referred to United States Magistrate Judge J. Boone Baxter for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge has submitted a report and recommendation that the petition be dismissed as barred by the statute of limitations. Docket No. 18. The Court has received and considered the Magistrate Judge's report, along with the record, pleadings, and all available evidence.

Petitioner received a copy of the Magistrate Judge's report on June 22, 2022. He filed no objections. Accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017). There being no ground of plain error, the Court hereby adopts the Report and Recommendation of the Magistrate Judge as the findings and conclusions of this Court.

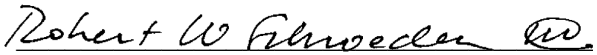
Additionally, in this case, Petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the petitioner to make a substantial showing of the denial of a

federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483–84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, the petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484; *Elizalde*, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–81 (5th Cir. 2000).

Petitioner has not shown that any of the issues raised by his claims are subject to debate among jurists of reason or that a procedural ruling was incorrect. Additionally, the questions presented are not worthy of encouragement to proceed further. Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, it is

ORDERED that the findings of fact and conclusions of law of the Magistrate Judge are correct, and his Report and Recommendation (Docket No. 18) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge’s recommendation. A certificate of appealability will not be issued.

So ORDERED and SIGNED this 23rd day of March, 2023.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE